REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

By the foregoing amendments claims 4-11 are cancelled and claims 12-31 are added, whereby claims 12-31 will be pending, with claims 12 and 27 being independent claims.

Support for the new claims can be found throughout the present specification and in particular, the original claims and pages 3-6, 11, 12, 17, 20, 32, 37, and 41-53 of the specification.

Applicants emphasize that the cancellation of claims 4-11 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

Claims 4-11 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 4-11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 4-11 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over

WO 91/18669 (hereafter "WO'669").

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 112, First and Second Paragraphs

Claims 4-11 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement and under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants note that the claims submitted herewith do not contain the language and features, respectively on which these rejections are based, wherefore these rejections are moot. However, it is pointed out that the cancellation of claims 4-11 is not to be construed as Applicants' admission that these rejections are of any merit.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 4-11 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over WO'669.

Applicants respectfully request that this rejection be withdrawn in view of the following comments.

The present claims are directed to a cosmetic preparation based on an O/W

microemulsion. This microemulsion comprises polyethoxylated and/or polypropoxylated O/W emulsifiers.

In comparison, WO'669 does not relate to cosmetic preparations at all and neither teaches nor suggests that the compositions disclosed therein can be used for cosmetic purposes.

Specifically, WO'669 is directed to pharmaceutical preparations and in particular, to injectable pharmaceutical preparations. This becomes clear from several passages of WO'669. For example, the abstract and page 1, lines 9/10 of WO'669 state that the emulsions thereof are useful for drug delivery. At page 6, lines 29-30 it is set forth in more detail that the principal utility of these emulsions is "as a lipophilic or amphiphilic drug carrier". In line therewith, the compositions of the Examples of WO'669 contain pharmaceuticals, i.e., ethiodol (an imaging agent), ibuprofen, insulin, piroxicam and lauric oil.

Further, at page 2, lines 26-28 of WO'669 it is set forth that the emulsions are dilutable, without breaking, with water and normal biological fluids. Which biological fluid the inventor of WO'669 is particularly interested in becomes clear from the paragraph bridging pages 3 and 4 of WO'669:

> The aqueous phase will often contain osmotic agents such as sodium chloride and/or glycerol to maintain the osmolarity at about 300 milliosmols, the osmolarity of human blood. The use of such an agent will often depend on how much emulsion is to be injected. If being used as a drug carrier, then for some drugs, only a milliliter or so of emulsion may be necessary. This amount is small enough, compared to the total human blood volume, that no adverse effect on osmolarity may occur without an osmolarity agent being included in the emulsion. If significant quantities of emulsion are employed, or simply as a matter of good conservative practice, such agents are desirably included in the emulsion. The same reasoning will also apply to the optional inclusion of buffering agents, such as phosphates, etc., to maintain blood pH.

Emphases added.

The above passages of WO'669 leave no doubt that the emulsions of WO'669 are exclusively intended for drug delivery, in particular, parenteral drug delivery. Moreover, WO'669 further emphasizes that these emulsions must be prepared according to a certain procedure:

> The microemulsions of my invention are prepared in a certain manner. It is not sufficient to merely add all the ingredients together and thoroughly mix them. Rather, two mixtures, each containing some of the ingredients are separately prepared and then mixed together in a certain procedure.

Emphases added. Page 5, lines 9-14.

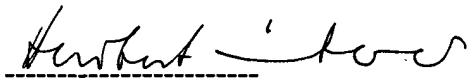
It is respectfully submitted that in consideration of the foregoing passages of WO'669 one of ordinary skill in the art would not be motivated at all to use the microemulsions of WO'669 for any other purpose than for (parenteral) drug delivery and in particular, for any cosmetic preparation for topical application to skin and/or hair. Accordingly, WO'669 fails to render obvious the subject matter of the claims submitted herewith, wherefore withdrawal of the claim rejection under 35 U.S.C. § 103(a) over this document is warranted and respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

P29692.A01

Respectfully submitted,
Anja EITRICH et al.



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